IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

RAJ KUMAR BIRLA VS. STATE OF RAJASTHAN
(S.B.C.Writ Petition No.6493/03)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Vivek Shah, Advocate for the petitioner.
Mr. Rajendra Dave, Dy.Government Advocate for the State.

REPORTABLE

The petitioner has filed this writ petition with the prayer that the respondents be directed to consider him for appointment on the post of Physical Teacher Gr.III (for short "P.T.I.") with all consequential benefits from the date persons lower in merit than him were so appointed.

Factual matrix of the case is that petitioner who possesses the degree of B.P.Ed. from Nagpur University applied for appointment on the post of Physical Teacher Gr.III advertised by the District Education Officer(Secondary) I, Bhilwara in the year 1998-99. In the merit list prepared pursuant to the said selection process, his name appeared at serial no. 3. According to the petitioner, when

he was illegally denied the appointment, he alongwith other three candidates filed a joint writ petition before this Court being S.B.C.Writ Petition No.979/99 which was disposed of on 13.12.2000 by a consent order that the controversy raised therein was covered by the decision of this Court reported in 1999 Vol.2 R.L.R. p.131 and the said petition was accordingly disposed of in terms of the directions contained therein. All the four petitioners therefore submitted their applications for appointment. The respondents however sought information in regard to the status of the university from which they had passed degree of B.P.Ed. In so far as the other three candidates are concerned, the National Council for Teachers Education(for short "N.C.T.E.") by their letter dated 24.6.2002 immediately responded. According to this letter, as the N.C.T.E. started working in the year 1995 itself, it was essential for institutions imparting education after 1996-97 to obtain its permission. On that basis, appointment was given to those three persons. According to the petitioner, even though the said letter also covers the case of the petitioner inasmuch as he had also completed three years B.P.Ed. course in summer of 1997. Since his admission to that course was in the academic session commencing from 1994-95, his case also should have been considered similarly. The N.C.T.E itself has sent clarification to the D.E.O.(Secondary). In the said

letter, it was stated that the constitution of the N.C.T.E. was made on 17th August, 1995 and its western regional committee started granting recognition to the teachers training institution from the academic session 1996-97 onwards and further that the concerned universities should approach the said committee for recognition of three years degree course of B.P.Ed. from the academic session 1996-97 onwards. The present petition has been filed against the backdrop of these facts.

The respondents have contested the writ petition and have submitted in their reply that although in the temporary merit list name of the petitioner appeared at serial no. 3 but when the final list was prepared, his name did not appear at all. It was therefore wrong to contend that the name of the petitioner had appeared at serial no. 3 in the merit list. Although it was admitted that appointments were given to other three candidates but it was denied that those appointments were made on the basis of the letter of N.C.T.E. dated 24.6.2002. According to the respondents, the letter of the N.C.T.E. dated 8.10.2002 clarifies the position that its western regional committee has started giving recognition to the teachers training institutions from the academic session 1996-97 onwards. The petitioners himself passed/completed the course of

B.P.Ed. in the year 1996-97 from the Nagpur University whereas the name of Nagpur University for B.P.Ed. has not been mentioned in the list of recognised universities/institutions issued by the Council in the year 1998. Since the petitioner has obtained three years B.P.Ed. degree from Nagpur University, the same is not approved for appointment as per the advertisement of the year 1998-99. The government also vide its letter dated 22.2.1999 has clarified that the N.C.T.E. Act, 1995 has come into force on 1.7.1995 therefore, the council has issued list of recognised institutions in 1998 wherein neither the Nagpur University nor the college of Narayan Rao Patil Vadade Physical Teacher University, Chandrapur wherefrom the petitioner obtained degree was not mentioned. Since the petitioner was not found eligible, his candidature was rightly not considered.

A Division Bench of this Court in State of Rajasthan vs. Jabra Ram, 2005(1) W.L.C.(Raj.) p.637 noted that though the Act had come into force on 1st September, 1995 but the regulations under which the steps were to be taken for recognition of the institutions could not be immediately framed and were later published by the Government of India in Gazette on 24.2.1996. Thus, the process of recognition of degrees could not commence before 24.2.1996. The petitioner in that case having taken admission

in the year 1995-96 and passed the B.Ed. Course in the year 1995-96, was held not to have been affected by the requirement of recognition of degree.

Subsequently, again a somewhat similar issue came up before a Division Bench of this Court in D.B.Civil Special Appeal (W) No.424/2002 State of Rajasthan & Ors. vs. Bharat Kumar Sharma & Ors. and three other connected appeals decided by a common judgment dated 19.1.2005.

A perusal of the aforesaid Division Bench judgments reveals that this judgment was based on still two earlier Division Bench judgments of this Court in Ram Narayan vs. State (D.B.C.Writ Petition No. 2884/1999) decided on 2.4.2003 and Ummed Ali vs. State of Rajasthan & Ors.(D.B.C.Writ Petition No. 2887/99)decided on 18.3.2004. It was held in the latter of above judgments that "the scheme unfolded in Sections 14 and 17 of the Act of 1993 clearly reveals that until the matter of recognition is under consideration and the order of refusal is communicated to the concerned institute, it is authorised to offer a course or training in the teacher education as a recognized institution and it does not get obliterated subsequently on non-recognition of the institution".

The aforesaid four Division Bench judgments thus having held that as per the Scheme of the Act of 1993, the requirement of recognition would not be insisted upon not only in the case of degrees awarded by the institutions even after 24.2.1996 but such requirement also cannot be insisted upon in those cases where the institutions have applied for recognition and their request for recognition is pending consideration with the council and until the refusal thereof is communicated to the concerned Institute. In such cases, the degree obtained by the candidates does not get obliterated just because the institution has not been recognised subsequently.

In the present case the petitioner having taken admission in the training course of B.P.Ed. during the academic session in 1996-97, the degree of B.P.Ed. was awarded to him in December, 1997 and even if it is taken that issue with regard to grant of recognition to the university or the institutions wherefrom the petitioner passed out the degree of B.P.Ed. was pending consideration with the council, whether or not such recognition was ultimately granted to it, would not make any difference because in view of the authoritative pronouncement of the Division Bench in the aforesaid judgments, he would nonetheless be entitled to

consideration for appointment on the basis of such degree because such degree awarded by the Amaravati University has not been only recognised by the State Government but has also been duly recognised by University Grants Commission as held by this Court in Ashok Kumar Sharma vs. State of Rajasthan , R.L.R. 1999(2) p.131.

In the result, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for appointment on the post of P.T.I.Gr.III on the basis of selection process held in the year 1998-99 if found suitable and further if any candidate lower than him is found to have been appointed, appoint him on such post with effect from the date of appointment of such candidate. The petitioner shall however not be entitled to any arrears of salary for the intervening period although his salary shall be notionally arrived at by treating him to have been appointed on the date of which the candidate immediately lower than him in merit was so appointed. He shall also be entitled to seniority with effect from the said date. Compliance of this judgment be made within a period of two months from the service of the copy of this judgment.

(MOHAMMAD RAFIQ),J.